o/c PC

1951. K **File No.** 5/51

Legal Dept

G. **BRANCH**

Subject:— Opinion on the Civil Procedure code 1908

P. 15/6

File No. 5/51 o/c P.C. /51

Gen. 194 a.

Office of the R.L.A.

Section 240(2) of the Government of India Act, 1935, by which the tenure of office of persons employed in Civil capacities in India was governed when the order of terminating Shri. Kamat's services was passed, provides inter alia that no such person shall be dismissed from the sergice by any authority subordinate to that by which he was appointed. Under the Constitution of India Also there is similar provision in Article 311(2) under which no such person can be dismissed or removed by any authority subordinate to that by which he was appointed. It is clear from the Civil Supplies Department note dated 12th October 1950 that the appointment of Shri. Kamath who was one of the nongazetted staff was made in the name of the Secretary to Government.. If that is so, the dismissal or removal from service can only be validly made by the Secretary, Civil Supplies Department. The order of termination which was made with the approval of the Honourable Minister, was signed by the Secretary also and it would not be invalid only because it was communicated to Shri. Kamath by an authority subordinate to him. If such a question arises in the suit, if any, filed by Shri. Kamath, the file containing these orders can be shown to the Court.

Sd/-
13-1
Remembrancer of Legal Affairs.

M.R.D.
6-7-50
C.4

U.R. to C.S.D., No. G-28 , dated the 15th January 1951.

Office of the R.L.A.

It was made clear to the Association both in the tender notice as well as in the letter of acceptance that the tender was for distribution of hay in Greater Bombay on commission basis. This has been admitted by the Association in para 2 of the notice given to Government by them through their attorneys. The claim of the Association therefore for commission on the sale of hay to Cutch and Saurashtra Governments by this Government or on the hay removed to Andheri gress depots is not admissible. The claim for expenses incurred on the staff is also not admissible as all such expenditure was to be incurred from the commission payable to the Association and no separate provision was made form such out of pocket expenses incurred by the Association. In the tender notice it was made clear that the estimated quantity of hay for distribution may be ~~1½~~ 1½ crore lbs or more but no guarantee was given and it was also made clear that the work could be suspended at any time without assigning any reason whatsoever. It is true that the total quantity sold by the Association came only to 13,51,430 lbs. but the Association was not given any guarantee about the quantity. The suit, if filed, would therefore be defensible. There is, however, no objection to settle the matter at Rs. 480 as proposed by the D.C.S. (Fuel) in view of the fact that the quantity sold wasxmuch shorter than the estimated quantity and the Association has always co-operated with Government.

Sd/-
4-2-

Remembrancer of Legal Affairs .

U.R. to C.S.D. No.G-53, datedx the 5th February. 1951.

M.R.D.
e-2-56

Office of the R.L.A.

Please se U.R. from C.S.D. No. 34/ 1543/III, dated 25-1-51 on pre-page.

Shri Nathalal Muljibhai Patel, hay contractor of Devgad Baria, Panch Mahals District, has served a notice on Govt. under section 80, Civil Procedufe Code claiming Rs. 24958-9-6 being the difference between the cost price plus 10 per cent profit on 2573 bales of gress frozen and taken over by Govt. And the price paid to him therefor by Govt. Viz., Rs.12,206-6-6-. The said stocks were frozen by the District Magistrate and Cheif Administrator, Panch-Mahals under his order, No. F.A.M.,dt 4-5-49 and the same were delivered to the Divisional Forest Officer, Gujrat States. Govt. has paid the price for the said stock of gress to the contractor @ the rate of Rs.31-8- per 1000 lbs.F.O.R. as fixed by the said District Magistrate's order, but the contractor claims the price from Govt. @ the rate of Rs.94-0-0- per 1000 lbs.

M.R.D.
6-7-56
C.4

Legal Department.

The view taken in the Civil Supplies Department Office note, dated 19th January 1951 is correct and the threatned suit, if filed, will be defensible.

Sd/-
12-2

Additional Secretary to Government.

M.R.D.
6-7-56
C.4

U.R. tp C.S.D.,No.G-64 dated the 13th February 1951.

Legal Department.

The Circle Inspector should not have entrusted the carriage of the attached goods to the accused himself. However, he had acted in good faith and as Government has defended his action in Court, Government may satisfy the decree passed against him.

Sd/-
Additional Secretary to Government.

M.R.D.
6-7-56
C.4

U.R. to C.S.D. No.G- 220, dated the 5th June '51.

Office of the R.L.A.

The short point is whether having regard to the concluding portion of clause(2) of article 31 of the Constitution, a provision be introduced in the Bombay Essential Commodities(Regulation of Disposal and Acquisition) Order, 1947to the effect that the rate mentioned on the requisitioning notice shall not be less than Government/procurement rates in respect of the commodity in question at the time .

Such a prrvision would no doubt be in conformity with the concluding portion of clause(2) of article 31 of the Constitution, but such aprovision is not necessary, because by reason of clause (5) of article 31 the limitations, which are imposed by clause (2), do not apply to the Essential Supplies (Temporary Powers) Act,1946, under which the Bombay Essential Commodities(Regulation of Disposal and Acquisition) Order, 1947, was issued (see the interpretation of article 31 in Hemant Santlal Alreia vs. the State of Bombay 53 Bom.L.R. p355).

Sd/-
2-6

Remembrancer of Legal Affairs.

M.R.D.
6-7-55
C.4

U.R. to C.S.B. ,No.G-212 dated the 2nd June 1951.

Office of the R.L.A.

The suit, if filed by Shri R.H. Thakkar, would be defensible.

2. I would, however, like to add that this is exceedingly hard on Shri Thakkar if his allegation that his average cost price per maund of kodra and kodri was Rs.12/- and Rs.22/- respectively, is true. He faces the prospect of losing nearly Rs 10916/-. The Civil Supplies Department may, therefore, consider whether some relief should not be given to him provided the case is true.

Sd/-
Remembrancer of Legal Affairs.

M.R.D.
6-7-56
C.4

U.R. to C.S.D. No.G-363 ,dated the 18th August1951.

Legal Department.

The conclusion arrived at by the Deputy Secretary, Civil Supplies Department that Government should defend the suit if filed by Shri Gokhale is correct. As the orders of dismissal were passed by Secretary, Civil Supplies Department, it can be contended that the order of dismissal was only conveyed to Shri Gokhale by an officer subordinate to him. If such a question arises in the suit, if any, filed by Shri Gokhale, the file containig these orders can be shown to the Court(R.L.A.'s No.G-28, dt.15-1-51).

Sd/-

Additional Secretary to Government

U.R. to C.S.D. No. 850econfl dated the 8th October '51

M.R.D.
6-7-56
C.4

Legal Department.

Shri Gokhale, after notice, was dismissed from Government service on 19th September 1949. Under section 240(2) of the Government of India Act, 1935, he could not be dismissed by any authority subordinate to that by which he was appointed. The dismissal order is issued under the signature of the Controller of Rationing, Bombay. Presumably he is the appointing Officer. If he is not, then at least he should not be a subordinate officer to the appointing authority. If this is so, the suit, if filed would be defensible.

Sd/-

Additional Secretary to Government,

U.R. to C. of R. No.G-489, dated the 12th Sepetember 1951.

M.R.D.
6-7-56
C.4

~~Legal~~ Department.

The Vahivatdar of Dehhoi has made it clear in his order dated 9th July 1949 that though the rent is fixed at Rs.75 still the landlord will have to accept whatever rent is ultimately fixed by the Civil Supplies Office. From this it is clear that the fixation of rent by the Vahivatdar at Rs.75 per month was not final. The District Magistrate in consultation with the Executive Engineer has now agreed to pay Rs.40/- per month as the rent but the landlord insists on Rs.61/-. The Civil Supplies Department is of the opinion that the goodown being of C' class and its capacity being small viz.1000 bags, the rent at ordinary standard should not exceed Rs.20/- per month. The District Magistrate is prepared to pay Rs.40 only because of non-availability of godowns at Bhilapur. The suit if filed, would be defensible if on consideration of the nature of the godown and its storage capacity and the prevailing rents in the village for similar structures the Court is satisfied that its reasonable rent will not exceed Rs. 40 per month.

Sd/-

Additional Secretary to Government.

M.R.D.
6-7-56
C.A

U.R. to C.S.D., No. g- 525. dated the 25th October 1951.

Legal Department.

The course suggested by the Deputy Director of Civil Supplies(Districts) in his note dated the 26th September 1951 is the proper course to be followed in this case. No doubt the claim is time-barred but as advised in Solicitor's opinion No.11913, dated the 22nd August 1950 and R.L.A.'s opinion 13182, dated the 18th September 1950 there is sufficient justification for taking an equitable view of the matter in this case and to allow the claim and that it is unusual for Government to raise a technical objection to a rightful claim otherwise good on merits.

Sd/-

Additional Secretary to Government.

M.R.D.
6-7-886
C.4

U.R. to C.S.D.,No.S- 561,dated the 13th Noveber 1951.

Legal Department.

The Order of the District Magistrate, Poona dated the 22nd September 1951 at page 45 A may be seen. It seems the District Magistrate has received some further communication from Shri Uttamchand on 17th August 1951 wherein he had agreed that his deposit amount of Rs.200/- may be set off against the sum of Rs.437-8-0 due from him and the District Magistrate has accordingly done so.

The only question that now remains to be considered is to recover the balance of Rs.237-8-0 from Shri Uttamchand and pay it to Shri Kasar. This amount cannot be recovered as an arrear of land revenue and therefore the reference in the District Magistrate's Orddr dated 22nd september 1951 to the attachment of the property of Shri Uttamchand is not understood. The only coude would be to recover the amount by filing a civil suit by Government. Shri Kasar cannot be made a co-plaintiff in such a suit.

Sd/-

Additional Secretary to Government.

M.R.D.
6-7-56
C.4

U.R. to C.S.D.,No.G-529,dated the 2nd November 1951.

Office of the R.L.A.

In this case Messrs. Hanumandas Radhakisan has not given any regular notice of suit under section 80 civil Procedure Code to Government claiming the difference in price of Rs.4/- per Benga Bengal manud of cotton seed. In his letters to the District Magistrate, West Khandesh he has stated that he would deliver the goods to the chairman, Dhulia Purchase and Sale Society at the rate of Rs. 10/- per Bengal manund under protest and shall recover Rs.4/- per Bengal manund from him. The District Magistrate states that the said society has lifted the stock of 715-25 Bengal manuds from Messrs. Hanumandas Radhakisan on thex 10th June 1951. The question therefore is whether a suit if filed by Messrs. Hanumandas Radhakisan for recovery of the difference in price of Rs.4 per Bengal manund and for compensation would be defensible.

The order of the District Magistrate, Dhulia, directing sale of 715-25 Bengal manuds of cotton seed to the Chariman, Dhulia Purchase and Sale Society, Dhulia, is at p. 43 of the file. Although no mention of clause 5 of the Bombay Essential ~~Commodities~~ commodities (control of Disposal and ~~and~~ Acquisition) Order, 1950 has been made in the preamble of the said Order, the District Magistrate had the power to direct sale of stocks of cottonseed under clause 5 and the Order is therefore not inexcess of ~~Jurisdiction~~ or illegal. It is also true that no stock of cottonseed was frozen under Government letter No.119/I, dated the 10th January 1951, which only contained instructions as to how the Collectors should act in the matter of freezing and disposal of cottonseeds by Ginners and Stockists but mere mention of this ~~letter~~ letter does not matter as Messrs. Hanumandas Radhkisan has already acted on the order and delivered the stock which they were directed to sell to the Dhulia Purchase and Sale Society. As required by clause 5 the price atwhich the stock should be sold was specified in the order as Rs. 10 per Bengal manund and if that is the reasonable price the dealer is not entitled to anything more. It would be therrfore possible to defend the order of ~~the District~~

P.T.O.

possiblex to defend the order of the District Magistrate, West Khandesh, dated the 5th June k951,if the party proceeds in a court of law.

Sd/-
6-12

Remembrancer of Legal Affairs.

U.R. to C.S.D.No.G- 614,dated the 7th December 1951.

M.R.D.
6-7-56
C.4

Legal Department.

In para 10 of the notice of suit Kantilal Ochhavalal's pleader has contended that the orders of freezing and requisitioning of his client's stock of maize are ultra virus as the offices issuing these orders have acted without lawful authority inasmuch as the State Government could not lawfully delegate its power to make orders under section 3 of the Essential Supplies(Temporary Powers) Act to its officers. These orders were issued under the Indian States Essential Commodities(Regulation of Disposal and Acquisition) Order, 1948 which was similar to the Bombay Essential Commidities (Regulation of Disposal and Acquisition) Order, 1947. In his opinion No.G-273, dated the 8th August 1950 given in respect of the latter order R.L.A. has held that there was no redulegation to the District Magistrates. However recently when section 3(3) of the Essential Supplies(Temporary Powers) Act was amended by the Central Government the question about the desirability of reissuing the said orders was considered and R.L.A. opined that in view of the view taken by some of the Courts that such entrustment of power amounts to redelegation(Cf. the decision in Fakir Mahomed vs. King I.L.R.(1949)Cut, 627), it would be desirable to reissue the said orders with the concurrence of the Central Government so that the defect if any may be cured(R.L.A.'s No.G-382,dated the 23rd August 1951). The Civil Supplies Department has, therefore. now issued a new order entitled the Bombay Essential Commodities (Regulation of Disposal and Acquisition) Order, 1951 in supersession of the previous two orders viz. one relating to Bombay State and other to the Indian States merged with it.

In the suit, if filed, in this case the plaintiff would contend that the order was bad for redelegation and the fact that the order is now reissued is likely to be construed by the Court in his favour. The District Magistrate, Panch Mahals also thinks that this contention has some force(Pl.see para 3 of his letterm at page 30 ante).

From the facts it seems the stock of maize was frozen on 18th October 1948 and released on 3rd January 1949. Even though the stock was in the possession of the The party was free to dispose it off till 10th February 1949. Even though the stock was inthe possession of the party when it was frozen and the party ought to have taken care of it, some allowance will have to be made for the natural deterioration which sets in respect of foodgrains when theywere not allowed to be sold. In his opinionNo-G-276,dated the 9th April 1949 and No.G-184, dated the 6th June 1950 R.L.A. has taken the view that the price which should be paid in such cases should be reasonable. It may not be the price at which he porchased the maize but it should at least be the prevailing market price.

In the light of the above consideration the Civil Supplies Department may consider whether it would not be advisable to comprimise the suit.

Sd/-
Additional Secretary to Government.

U.R. to C.S.D.,No. G- 475.dated the 4th October 1951.

M.R.D.
6-7-56
C.4

SVA 22/8

22/8